Supreme Court, U.S.
FILED
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No. 94-1514

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1994

GEORGE GILMORE MARTIN and
JULIA S. MARTIN,

Petitioners,

vs.

BANK OF FLOYD; Gentry, Locke,
Rakes & Moore; William R. Rakes;
William J. Creech; G. Harris Warner, Jr.
and Ronald Leon Moore,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Petitioners' Reply to Respondents' Briefs in Opposition

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BEST AVAILABLE COPY

As provided by Rule 14 of the Rules of the Supreme Court, "only the questions set forth in the petition . . . will be considered by the Court."

The questions set forth in the Petition are:

> (1) Is purposeful availment requirement for specific personal jurisdiction satisfied if defendants purposefully direct criminal activity into the forum and the plaintiffs' cause of action arises from that activity; and
>
> (2) Would the assertion of personal jurisdiction in this case comport with "fair play and substantial justice"?

The Brief in Opposition of Respondents Bank of Floyd and Ronald Leon Moore ask the Court to consider another question:

> Whether the Virginia Respondents subjected themselves to the jurisdiction of the Georgia District Court by mailing two form letters requesting an updated financial statement and a notice of foreclosure letter to the Petitioners in Georgia?

Pursuant to Rule 14, since this question is not set forth in the Petitioners' Petition, it can not be considered by the Court. Therefore, most of these Respondents' Brief is immaterial and irrelevant to the questions properly before the Court. In response to the parts of their Brief that may be relevant, the Petitioners respond as follows:

1. The letters, as set forth in the supplemental appendix hereto, show themselves to be more than letters "requesting updated financial information"; the letters of Leon Moore to petitioners dated 08-21-91, and 10-10-91, convey messages to the Petitioners that Bank wanted to "continue to serve your borrowing needs" and "we look forward to serving your banking needs in the future"; these messages are shown to have been false and deceptive by the Bank's

prior letter to Mr. Bill Rakes dated 08-13-91 wherein the Bank states "Leon Moore has spoken to you about the bank's desire to begin foreclosure proceeding on its $630,000 loan to George G. and Julia S. Martin. To begin the process, I am enclosing ....". Moore's two letters not only omitted to inform the Petitioners of the highly material fact that the Bank had already begun a foreclosure process concerning the Petitioners but also actively and falsely purported to the Petitioners that the Bank wanted to "continue serving [their] borrowing needs".

2. Twelve letters, including these two, were purposely caused to be sent <u>into</u> Georgia by these Respondents and others. The

letters have been alleged to have violated the U.S. Mail Fraud Laws in Georgia and to have constituted predicate acts of Racketeering activity in Georgia from which the Petitioners' cause of action arose.

3. The jurisdictional issue is not whether a large number of acts by Respondents occurred outside Georgia, but instead did a constitutionally sufficient minimum number of actions occur in Georgia to satisfy the Georgia Long-Arm Statute and the Federal Due Process clause.

Similarly, the Brief in Opposition of the other Respondents asks the Court to consider yet another question:

> Whether the district court, a Georgia forum, lacked personal jurisdiction over the defendant Virginia attorneys when their only contacts with Georgia

were (1) sending the petitioners, who had moved from Virginia to Georgia, a notice of foreclosure on collateralized Virginia property in connection with the petitioners' default on a loan obtained by petitioners, when they were Virginia residents, from a Virginia bank and (2) serving the petitioners with a summons in connection with the subsequent deficiency action brought by the attorneys on behalf of the Virginia bank?

Pursuant to Rule 14, since their question is not set forth in the Petitioners' Petition, it can not be considered by the Court. Therefore, as before, most all of these Respondents' Brief is immaterial and irrelevant to the questions properly before the Court.

In response to the few parts of the Brief that may be relevant, the Petitioners respond as follows:

1. The "special and important reasons" for granting the Writ of Certiorari are:

   (a) The Eleventh Circuit Court

of Appeals has decided a federal question in a way which conflicts with an applicable decision of the U.S. Supreme Court, i.e. Burger King v. Rudzewicz, 471 U.S. 462; and

(b) The U.S. Supreme Court has not explicitly considered the jurisdictional effects of defendants purposely directing criminal activity into a forum when a civil cause of action arises from that criminal activity. There are a large number of civil lawsuits based on criminal activity filed every year. Also, there is a growing tendency in the law to give civil redress to victims for injuries which

are sustained as a result of criminal activity of perpetrators. Therefore, the issue is important.

2. The Petitioners moved to Georgia about January 20, 1991; missed the payment due to the Bank on May 1, 1991; and the Bank started the foreclosure process on August 13, 1991; and Moore misinformed and deceived the Petitioners in Georgia on August 21, 1991, and October 10, 1991. Therefore, it is not accurate for these Respondents to state "the unilateral act of Petitioners moving to Georgia provided the sole reason for any contact by the attorneys with Georgia." The reasons alleged for which the attorneys had contact with Georgia was that they willingly chose to become

participants in schemes to cheat the Petitioners out of a substantial amount of money and used the U.S. Mail to further the schemes.

3. There is no mandatory counter-claim rule produced by Respondents showing that Petitioners were required to counter-sue the Respondents in Virginia. The Virginia judgment merely shows that the schemes are proceeding on course.

4. Contrary to assertions of these Respondents, the Georgia Long-Arm Statute, O.C.G.A. § 09-10-91, provides for

> "personal jurisdiction over any nonresident . . . . in the same manner as if he were a resident of the State, if in person or through an agent, he: . . . (2) Commits a tortious act or omission <u>within</u> the State".

> The Petitioners causes of action are for tortious acts and omissions within Georgia therefore, jurisdiction lies under O.C.G.A. § 09-10-91.

Since all Respondents have failed to address the questions properly before this Court as explicated in Petitioners' Petition, Petitioners respectfully suggest to the Supreme Court that Respondents have implicitly conceded that the alleged criminal activity directed at Petitioners in Georgia by Respondents satisfies the purposeful availment requirements for specific personal jurisdiction and that the assertion of personal jurisdiction in this case comports with "fair play and substantial justice."

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SUPPLEMENTAL APPENDIX

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1. Letter from Moore to Respondents dated 08-21-91 11

2. Letter from Moore to Respondents dated 10-10-91 12

3. Letter from Bank to Bill Rakes dated 08-13-91 13

August 21, 1991

Mr. George G. Martin
6210 Aberdeen Drive, N.E.
Atlanta, Georgia 30328

Dear Mr. Martin:

Federal Regulations require a current financial statement and supporting financial statements on any customer borrowing from any FDIC Insured Bank.

During a recent examination by the regulators, the following information was found to be missing or out of date on your file:

1 - An up to date Financial Statement

In order that our Bank can remain in compliance and continue to serve your borrowing needs, we ask that the information be provided within 15 days.

Should you have any questions, please call me or Dianne Hamm. Thank you for your prompt attention to this matter. We look forward to serving your banking needs in the future.

Sincerely,

Leon Moore
Executive Vice President

LM/slr

Enclosure

October 10, 1991

Mr. George G. Martin
6210 Aberdeen Drive, N.E.
Atlanta, Georgia 30328

Dear Mr. Martin:

Federal Regulations require a current financial statement and supporting financial statements on any customer borrowing from any FDIC Insured Bank.

During a recent examination by the regulators, the following information was found to be missing or out of date on your file:

1 - An up to date Financial Statement

In order that our Bank can remain in compliance and continue to serve your borrowing needs, we ask that the information be provided within 15 days.

Should you have any questions, please call me or Dianne Hamm. Thank you for your prompt attention to this matter. We look forward to serving your banking needs in the future.

Sincerely,

Leon Moore
Executive Vice President
and CEO

LM/bws
Enclosure

August 13, 1991

Mr. Bill Rakes
Woods, Rogers and Hazelgrove
105 Franklin Road, S.W.
P.O. Box 720
Roanoke, Virginia 24004-0720

Dear Mr. Rakes:

Leon Moore has spoken to you about the bank's desire to begin foreclosure proceedings on its $630,000.00 loan to George G. and Julia S. Martin. To being the process, I am enclosing:

1. A loan statement as of August 12, 1991.

2. A copy of the Deed of Trust.

3. A copy of the Note.

4. A copy of a Certificate of Partial Satisfaction. (One lot has been released.)

5. A copy of the relevant title insurance policy.

6. A copy of the property appraisal, which also contains some plat descriptions.

You will notice that in addition to the one release, there is some difference between the appraisal and the deed of trust, i.e. Lot 15A.

Our collateral consists of lots in four parcels - Williamsburg Court, Nichols

Estates, Hidden Valley Forest and the "Colonial Williamsburg" Townhouse lots.

I understand from Mr. Moore that you will handle this case for us for a fee of the lesser of your actual charges or 5% of the sale proceeds.

If I can be of further assistance or if you need additional information to begin the proceedings, please contact me at the address above or telephone number above.

Sincerely,

Lawrence M. Renfroe
Senior Vice President

LMR/slr

Enclosures